

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department - Khammam District - Revision Petition filed by Smt. Karnati Papamma, W/o Satyanarayana, R/o Kakarla Village, Julurpadu Mandal, Erstwhile Khammam District against the orders of the Additional Agent to Government, Bhadrachalam in C.M.A.No.1/2003, dated:16.10.2004 - Revision Petition Dismissed - Orders - Issued

TRIBAL WELFARE (LTR)DEPARTMENT

G.O.Ms.No. 4

Dated: 30-05-2020
Read the following:-

- 1)Revision Petition filed by Smt. Karnati Papamma, W/o Satyanarayana, R/o Kakarla Village, Julurpadu Mandal, Khammam Dist., dt.08-04-2005.
- 2)Govt.Letter and Memo.No.3334/LTR-2/2005, Dt:21-04-2005 & Dt. 09-06-2005 .
- 3)Orders of the Hon'ble High Court of AP, Hyderabad dt. 15.3.2005 in WP No. 1996/2005 and also orders dt. 01.08.2005 in W.P.No. 11034/2005 filed by the Revision Petitioner.
- 4)Govt.Memo.No.3334/LTR-2/2005, 23.08.2005.
- 5)From the Addl.Agent to Govt., Bhadrachalam, Lr.RP.No.3334/LTR-2/2005-2(CMA.No.1/2003), Dt:29.12.2008.
- 6)Govt.Letter No.3334/LTR-2/2005, dt. 18.4.2012, Dt:19-10-2012, 15.6.2017 29.08.2017 , 09.02.2018,19.04.2018 06.06.2018 & 28.07.2018 and dt.22.11.2019

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ORDER

In the reference 1st read above, Smt. Karnati Papamma, W/o Satyanarayana, R/o Kakarla Village, Julurpadu Mandal, Bhadrachalam District has filed Revision Petition along with Stay Petition through her Counsel before the Government aggrieved by the orders of the Additional Agent to Government, Bhadrachalam in Bhadrachalam in C.M.A.No.1/2003, dated:16.10.2004 in respect of land to an extent of Ac.4.00 gts in Sy.No.23 situated at Kakarla Scheduled Village of Jurlupadu Mandal, Erstwhile Khammam District now in Bhadrachalam District

2. In the reference 2nd read above, Government have rejected the Stay Petition and the Project Officer & Additional Agent to Government, Bhadrachalam was requested to furnish Para Wise Remarks and connected case records and in the reference 5th read above the Addl. Agent to Government, Bhadrachalam has furnished Para Wise Remarks and connected case records.

3. The details of the case are as follows:

- Case previously called on 30.4.2012, 10.7.2012, 29.10.2012, 15.7.2017, 16.9.2017, 3.3.2018, 28.4.2018, 30.6.2018, 4.8.2018 and finally called on 7.12.2019. The Counsel for the Petition has attended the Hearing.

Perused the case record and observed that; .

- Initially, the LTR case No.1161/94/JLP was initiated by the Special Deputy Collector (TW), Palvanha, on a report of the Mandal Revenue Officer, Julurpad that a transaction took place in contravention of LTR Regulation I of 1970 between two non-tribals viz., Sri Cherukumalla Narayana S/o Seethaiah (Petitioner)and Smt.Karnati Papamma W/o Satyanarayana (Respondent). During the enquiry, the lower court i.e. the SDC (TW), Palvanha verified pahani for the years 1969-70 and 1970-71 and found that name of the respondent viz., Smt Karnati Papamma was not shown as cultivator, but the name of the petitioner viz., Sri Cherukumalla Narayana was shown as cultivator.

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- Hence, it was found clear that the respondent has produced sada sale deed dt.15.10.1968 without having possession over the suit land and the said agreement was not a sustainable deed. Therefore, the lower court passed orders on 15.5.1996 proving that the transfer of immovable property belonging to non-tribal (petitioner) was made to another non-tribal (respondent) in contravention of sub-section (1) of Section (3) of the APSA LTR 1/59 R/W Regulation I of 1970, after commencement of the said Regulation. Accordingly, in exercise of the powers conferred under sub-section 2 (a) of the Section (3) of the Regulation I of 1959 as amended by Regulation I of 1970, ejectment was ordered in respect of the land under dispute admeasuring 4.00 acres in Sy.No.23 in Kakarla (v) of Julurpad Mandal in Khammam District with directions to the Mandal Revenue Officer, Julurpad to take over possession and assign it to the eligible tribals as per rules in force.
- Aggrieved by the above orders, the revision petitioner herein viz., Smt. Karnati Papamma W/o Satyanarayana R/o Kakarla (v) had filed an Appeal before the appellate authority i.e. Additional Agent to Government & Project Officer, ITDA, Bhadrachalam vide CMA No.1/2003, wherein the appellate authority had passed orders on 16.10.2004 as follows:
- Appellant purchased the schedule land under a sada sale deed dated 15.10.1968 executed on a white paper which has no value in the eye of law.
- The sale must be registerable as per Section 17 of the Registration Act and hence the transaction through sada sale deed cannot be accepted as legally valid sale.
- The document is concocted for the purpose to overcome the Regulation 1/59 as amended by Regulation 1/70.
- Lower court also mentioned that as per verification of pahanies for the years 1969-70 and 1970-71, name of appellant was not shown as cultivator but name of respondent (non-tribal seller) was shown as cultivator. This evidence was sufficient to believe that the claimed transaction took place after 1971 only, in violation of Regulation 1/59 as amended by Regulation 1/70.
- Appellant also filed Adangals for the year 1999-2000 and LR receipts which were also not useful and no way help case of the Appellant.
- Therefore, as per evidence placed before the appellate authority, transfer of immovable property belonging to one non-tribal was made to another non-tribal in contravention of Regulation I of 1959 as amended by Regulation I of 1970 and accordingly upheld orders of the lower court.
- MRO Julurpadu was directed to take over possession of the schedule property i.e. 4.00 acres in Sy.No.23 situated in Kakarla (v) of Julurpad Mandal under the cover of panchanama and assign it to eligible tribals.
- The Revision Petitioner filed WP No.1996 of 2005 in the Hon'ble High Court praying to quash orders passed by the Special Deputy Collector (TW) and the Additional Agent to Government in LTR case No.1161/1994/JLP dt.15.5.1996 and in CMA No.1 of 2003, dt.16.10.2004 respectively. The Hon'ble High Court after hearing arguments, had passed orders on 15.3.2005 holding that it is not a case where the fundamental rights of the petitioner have been infringed or that there is violation of principles of natural justice or that the authority who passed the order has no jurisdiction at all. Since the case on hand does not come within any of the aforesaid three requirements, the Writ Petition deserves to be disposed with a direction to the petitioner to avail the statutory remedy available in law, if he is so advised and accordingly disposed the WP.

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- Aggrieved by the orders of the appellate authority in CMA No.1/2003, dt.16.10.2004, the Revision Petitioner viz., Smt.Karnati Papamma W/o Satyanarayana, aged 55 years, occ: Agriculture R/o Kakarla village of Julurpad Mandal, Khammam District (now in Bhadrachalam District) has filed Revision Petition under Section 6 of the LTR 1959 as amended by 1/70, before the Government on 8.4.2005, against the respondents viz., 1) Agent to Government (District Collector), Khammam; 2) The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam, Khammam District; 3) The Special Deputy Collector (Tribal Welfare) Palvoncha, Khammam District; 4) The Mandal Revenue Officer, Julurpad Mandal, Khammam District and 5) Cherekumalla Narayana S/o Seethaiah, aged: major, occ: Agriculture R/o Kakarla, Julurpad Mandal, Khammam District urging the following grounds:
- The provisions of the Regulation does not confer any power to the 1st respondent (Agent to Govt.) to transfer any appeal filed under Section 3 (3) to the file of the 2nd respondent (Additional Agent to Government & Project Officer ITDA Bhadrachalam). As such, the transfer of appeal by 1st respondent to the file of 2nd respondent and passing of impugned order by 2nd respondent are illegal and without authority and as such are liable to be set aside.
- As per provisions of AP (Scheduled Area) Land Transfer Regulation, 1959 r/w AP Agency Rules, the Agents to the State Government shall be the Collectors, District Magistrate and District Judges within the Agency Tracts included in their respective Districts. Admittedly, the 2nd respondent is not the District Collector - as such he has no authority to entertain any appeal under the AP (Schedule Area) Land Transfer Regulation, 1959.
- Respondents 1 to 3 failed to see that the Regulation 1/59 as amended by Regulation 1/1970 which prohibits any transfer of immovable property in the Agency Areas except in favour of STs came into force w.e.f. 3.2.1970. The Full Bench of the Hon'ble High Court of Andhra Pradesh in a case reported in AIR 1982 A.P. page 1 held that the said Regulation is only prospective and does not affect the transfers whether valid or invalid which took place prior to coming into force of said Regulation. It was further held by the Hon'ble Full Bench that the authorities under the Regulation have no jurisdiction to go into the validity or invalidity of any transaction even if the documents are not registered as per the provisions of Registration Act or even if proper Stamp Duty has not been paid as per the provisions of the Stamp Act. The said judgement of the Hon'ble Full Bench was confirmed by the Hon'ble Supreme Court of India.
- The finding of the respondents No.2 and 3 that the sale dated 15.10.1968 has no value in the eye of law on the ground that proper stamp duty has not been paid and it was not registered as per the provisions of Section 17 of the Registration Act and as such the petitioner is liable to be evicted, is contrary to the law laid down by the Full Bench of Hon'ble High Court which was confirmed by Hon'ble Supreme Court of India.
- Respondents 2 and 3 erred in not observing that payment of land revenue is proof of possession and as the petitioner produced land revenue receipts from the year 1968-69 onwards, it cannot be said that the petitioner is not in possession of the land on the simple ground that the name of the petitioner was not mutated in the pahanies for the years 1969-70 and 1970-71.

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- Respondents 2 and 3 erred in not observing that the petitioner is an illiterate lady eking out her livelihood by cultivating the land purchased by her and is not well versed with the procedures.
- Respondents 2 and 3 erred in not observing that for getting the names mutated in the revenue records it takes considerable time and simply because the name of the petitioner is not found in the occupation column of the pahanies for the years 1969-70 and 1970-71 it cannot be said that the sale transaction dated 15-10-1968 under which the petitioner is claiming the land in dispute is in violation of Regulation 1 of 1959, especially when the authorities found that the petitioner is paying land revenue since 1968-69 onwards.
- Respondents 2 and 3 erred in ignoring the settled law that payment of land revenue is proof of possession and also the law laid down by Hon'ble Supreme Court of India that the entries in pahanies are the paradise of Village Patwari and the tiller of the land is not concerned with that.
- Therefore, the Revision Petitioner prayed the Government to set aside order of the learned Additional Agent to Government & Project Officer ITDA Bhadrachalam dated 16.10.2004 in CMA No.1 of 2003 and pass such other order as may be deemed just and proper under the circumstances of the case. The Revision Petitioner also filed Affidavit praying the Government to grant stay of all further proceedings in pursuance of the order of the 3rd respondent dated 15.5.1996 in LTR case No.1164/94/JLP which was confirmed by the 2nd respondent by order dated 16.10.2004 in CMA No.1 of 2003 pending disposal of the revision by the Government.
- The revision petitioner had filed another WP No.9543 of 2005 for not numbering the statutory revision and stay petition therein filed under section 6 of APSA LTR 1959 as per the directions of the Hon'ble High Court in WP No.1996 of 2005 dated 15.3.2005 and not passing any order in the said petition even though the revision and the stay petition were filed as long back as on 8.4.2005 as arbitrary, illegal and in deprivation of the livelihood of the petitioner and as such violative under Articles 14 and 21 of the Constitution of India. The Hon'ble High Court after hearing arguments, issued Notice on 28.4.2005 directing the official respondents viz., 1) State of AP rep by its Principal Secretary, SW Department, 2) Agent to Govt (Dist. Collector), Khammam, 3) Additional Agent to Government & Project Officer ITDA Bhadrachalam, Khammam District, 4) The Special Deputy Collector (Tribal Welfare), Palvoncha, Khammam District, 5) The Mandal Revenue Officer, Julurpad Mandal, Khammam District), to show cause as to why in the circumstances set out in the petition and the affidavit filed therewith, the writ petition should not be admitted.

4) Government after careful examination of the Revision Petition rejected prayer of the revision petitioner for grant of stay as there were no valid grounds (vide letter No.3334/LTR.2/2005-1, dated 21.4.2005 addressed to the Counsel for the Petitioner) and also called for original record from the appellate court i.e. Addl. Agent to Government & Project Officer ITDA Bhadrachalam along with para-wise remarks to the Revision Petition vide Govt.Memo.No.3334/LTR-2/2005-3, dt.9.6.2005.

5) The Hon'ble High Court of AP at Hyderabad in WP No.11034 of 2005 filed by the Revision Petitioner, passed orders on 1.8.2005 directing the official respondents not to evict the petitioner from the scheduled land pending disposal of the revision by the first respondent i.e. Government and the first respondent is also directed to dispose of the revision expeditiously preferably within a period of three months from the date of receipt of the said order. Accordingly, the WP was disposed of at the admission stage.

6) The gist of the para-wise remarks of the Additional Agent to Government & Project Officer ITDA Bhadrachalam is as follows:

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- The Hon'ble High Court of AP in WP No.1996/20056, dt.15.3.2005 filed by the revision petitioner viz., Karnati Papamma held that the 1st respondent i.e. the Dist. Collector, Khammam has got power to transfer the cases to the 2nd respondent (i.e. Addl.Agent to Govt. & PO ITDA Bhadrachalam). Accordingly, the 2nd respondent i.e. Addl. Agent to Govt. & PO ITDA Bhadrachalam entertained and decided the case transferred by the 1st respondent.
- Revision petitioner's case is that the schedule land was purchased on 15.10.1968 on white paper and lower court orders that as per revenue records like pahanies for the years 1969-70 and 1970-71, name of revision petitioner did not find place even in enjoyers column. Even in pahani 1999-2000 it shows that Ch.Narayana (seller) as pattedar and revision petitioner's name as enjoyer and in Col.No.15 it has been recorded as sale. If really the petitioner purchased the schedule land in the year 1968, her name would have been recorded in pattedar column as well as enjoyer's column, even in pahani 1999-2000 her name was not shown as pattedar. As per that it is clear that the revision petitioner came into possession of schedule land after commencement of the regulation. Therefore, the contention of the revision petitioner is not correct.
- The revision petitioner has not filed L.R. receipts for the years 1968-69. The LR receipts are not sufficient proof for the establishment of possession. The revenue authorities will maintain pahanies and in the said pahanies they will write the actual enjoyer's name and it will be recorded. In this case the petitioner has not filed any such proof to prove her possession prior to 1970.
- Even by pahani 1999-2000 also her name was not mutated in Revenue records in pattedar column i.e. even after a lapse of more than (38) years if really she would have purchased the land. Therefore, her possession after 1970 is hit by Regulation.
- The contention of the revision petitioner that the 1st Respondent i.e. the Agent to Government, Khammam has no power to transfer the case and thereby the 2nd respondent i.e. Additional Agent to Government & Project Officer ITDA Bhadrachalam cannot entertain the same and decide, is not correct. In the WP No.1996/2005 filed by the revision petitioner, the Hon'ble High Court passed orders on 15.3.2005 operative part of which is as follows:

"With regard to the 2nd contention that the 1st respondent-Agent to the Government has no jurisdiction to transfer the case to the 2nd respondent, no doubt it is a fact that there is no provision in the Regulation 1 of 1970 or Regulation 1 of 1959 to the effect that the Agent to Government can transfer the case to the Additional Agent. It is not disputed before this court that the 2nd respondent was designated as Additional Agent to the Government by the Government by virtue of a Government Order. After designation of the Project Officer as Addl. Agent to the Government, the cases pending before the 1st respondent have been transferred to the 2nd respondent. When the Agent to the Government was given power to take a case on file, it is implied that he has got power to transfer the same to the Additional Agent. It is an incidental power and does not require any specific provision. The definition of Agent under Section 2 (b) of Regulation 1 of 1959 reads as follows:

"Agent means the person designated by the State Government as an Agent to the Government in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam or Mahaboobnagar) as the case may be".

Admittedly, the 2nd respondent was designated as Addl. Agent to the Government. Therefore, when the 1st respondent is empowered to take the case into cognizance and has power to dispose of the same, then he has an incidental power to transfer the same to the Addl. Agent to the Government. Therefore, the contention of the learned counsel for the petitioner is unacceptable.

Originally the case is initiated under Rules 7(1) and 7(2) of the AP (Scheduled Areas) Land Transfer Regulation Rules, 1969. Under Rule 8 (1) of the Regulation 1 of 1959, the State Government may from time to time make rules to carry out the purpose of this Regulation. Those rules do not require any assent of the President. The Special Deputy Collector is competent to decide the suit. Under Section 6 the State Government may revise any order; decree passed by the Agent, Agency Divisional Officer or any other prescribed officer under this Regulation. Therefore, the petitioner has to approach the Government which is the statutory revisional authority. The contention that Act 1 of 1970 is prospective one or whether those authorities are entitled to decide the issue of registration of document or not are required to be decided by the revisional authority because these are questions of fact."

- The other contention of the revision petitioner that she had purchased the land prior to commencement of the Regulation I of 1970, is also not correct. There are no corroborative evidences in her case. If she had purchased the land on 15.10.1968, her name should have been reflected in the revenue records more particularly the pahanies from the said period i.e. pahanies of 1968 onwards either as pattedar or as cultivator. Admittedly, her name was not found in the revenue records for the crucial period and her name was found written in enjoyer column of pahani 1999-2000 and in Col.No.15 of the pahani it was written as sale. This amply goes to prove that she purchased the schedule land of 4.00 acres in Sy.No.23 situated in Kakarla (v) of Julurpad Mandal in Khammam District (now in Bhadradi Kothagudem District) after the commencement of Regulation I of 1970 came into force w.e.f. 3.2.1970 and therefore, attained the nullity.

7) Government after conducting hearings and after careful examination of the Revision Petition and as verified from the documents produced before the authority as well as before the Additional Agent to Government do not find any valid reason to interfere in this Revision Petition filed by Smt.Karnati Papamma, W/o Satyanarayana, R/o Kakarla Village, Julurpadu Mandal, Khammam District which is pending since 2005 and accordingly hereby DISMISS the Revision Petition and upheld the orders passed by the Additional Agent to Government and Project Officer, ITDA, Bhadrachalam dt16.10.2004 in C.M.A.No.1/2003.

8). The Additional Agent to Government and Project Officer, ITDA, Bhadrachalam, Bhadradi Kothagudem District shall take necessary further action accordingly. The original case records received in the reference 5th read above are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr. CHRISTINA Z.CHONGTHU
SECERETARY TO GOVERNMENT

To

- 1) Sri Karnati Papamma, W/o Satyanarayana,
R/o Kakarla Village, Julurpadu Mandal, Khammam District
- 2) Sri Cherukumalla Narayana S/o. Seethaiah
R/o. Kakarla Village, Jurlupadu Mandal, Bhadradi Kothagudem District
- 3) The Project Officer, ITDA and Additional Agent to Government,
Bhadrachalam, Bhadradi Kothagudem District(w.e.)

Copy to :

The Spl. Deputy Collector(TW), Bhadrachalam,
Now Bhadradi Kothagudem District for information and necessary action.
The Tahsildar, Jurlupadu Mandal, Now Bhadradi Kothagudem District
for necessary action.

Sri Hari Sredhar, Advocate, 105, Srinivasa Apartments, Near Zahara Masid,
Humayun Nagar, Hyderabad -28 (Counsel for the Petitioner)

P.S to M(TW)/P.S. to Prl.Secretary(TW)

SF/SC

//FORWARDED:: BY ORDER//

SECTION OFFICER